(4)

Supreme Court, U.S.
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No. 04-712

IN THE

Supreme Court of the United States

LINCOLN PROPERTY COMPANY and
STATE OF WISCONSIN INVESTMENT BOARD,

Petitioners,

v.

CHRISTOPHE ROCHE and JUANITA ROCHE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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COUNTER-STATEMENT TO STATEMENT OF INTEREST OF AMICI CURIAE

Respondents, in accordance with Supreme Court Rule 15(2), state the following:

1. The Amici Curiae state that it is undisputed that Petitioner, Lincoln Property Company, is a Texas Corporation. The record in this case and the Fourth Circuit's review of the same disagree with that assertion. The Appendix to this brief demonstrates the inaccuracy of that claim, as well as the declaration found at page 3 of the Amici brief: ". . . defendant that is undeniably diverse".

2. Amici wrote at page 13 that it is undisputed that neither defendant is a citizen of Virginia. This is a misstatement because the Respondents' Motion to Remand in the district court included an argument that there was a lack of subject matter jurisdiction on the basis that Defendant SWIB was an arm of the State of Wisconsin and, therefore, not a citizen for diversity purposes. *Roche v. Lincoln Property Co.*, 373 F.3d 610, 613 (4th Cir. 2004). The circuit court found there was a lack of subject matter jurisdiction because Lincoln could not prove diversity of citizenship; therefore, SWIB's citizenship for diversity purposes was not addressed, nor was the merits of the case. *Id.* at 622.

3. Contrary to the *Amici's* interpretation of the *Roche* decision, the Fourth Circuit did not look beyond the citizenship of the defendant named in the complaint to identify a non-named affiliate to destroy jurisdiction. The *Roche* decision held that Lincoln, as named in the complaint, had not proven itself to be a corporation at all, but rather a partnership. This was based upon the uncontroverted

evidence and Petitioners' insufficiency in supporting the record with jurisdictional facts to overcome the doubt it had created by its own spokespersons' statements and confusing submissions.

4. The *Roche* decision did not instruct, as claimed by Amici, that the citizenship of a non-named limited partnership may be based upon its "nexus" to the state in which the lawsuit is filed, as opposed to the citizenship of its partners. The *Roche* decision instructed that if a named removing party which has its citizenship challenged does not place in the record sufficient and reliable evidence to carry its burden of proving diversity of citizenship, the case should be remanded to state court.

5. Lincoln is not only a member of the National Multi-Housing Counsel and the International Counsel of Shopping Centers, but also has an officer who serves on the Executive Committee of NMHC. Lincoln's partner in the *Roche* case, EQR, has an officer who is on the Board of Directors of the National Apartment Association; and an official of Lincoln is the NAA PAC coordinator; and another Lincoln officer is in charge of the NAA Leadership Lyceum. The Real Estate Round Table is comprised of seven of the ten Associations who claim to be Amici Curiae.

6. The *Amici* stated at page 15 of its brief that Lincoln answered the complaint fully prepared to satisfy any award against it, but the record suggests otherwise. When questioned about payment for any possible exemplary damages and that Lincoln's net worth financials were needed, Lincoln stipulated that it was the limited partnership, EQR/ Lincoln Limited Partnership, which was going to be responsible.
App. G, 19a-20a.

7. The Amici brief adopted the same sophism as Petitioner when it stated that the *Roche* case holds that citizenship may be based on a partnership's purported "nexus" to a state rather than the citizenship of its partners. The circuit court clearly pointed out that "the citizenship of a limited partnership is determined by reference to **all** of its partners." *Id.* at 618. [emphasis was that of the circuit court]. A second time on that same page the court the stated: "As Lincoln no doubt concedes, however, the citizenship of a limited partnership is determined by the citizenship of **all** of its partners, **both limited and general**." *Id.* [emphasis added by the court, which also cited to the joint appendix and to *Cardon*, 494 U.S. at 192-93].

RESPONSE TO AMICI ARGUMENT

The Amici's only new matter argued is the contention that the circuit court "appeared to fault Lincoln for its decision to do business through different entities." Amici, at 7. The brief then explains the purposes of a Special Purpose Entity. Nowhere in the *Roche* opinion did the court criticize or fault Lincoln for utilizing a "SPE" or any other type of business structure. What the court did find was that Lincoln's designated Federal Rule of Civil Procedure 30(b)(6) spokesperson continually and unequivocally denied that Lincoln was a corporation, but a partnership. *Roche* at 616, and please see App. B. There, Mr. Chaney insists that Lincoln does not have a board and is a partnership (App. 4a); that he works for a partnership and when given another chance to deny it when questioned, "Now, Lincoln, as you say, is a partnership?" answers "Yes." (App. 5a). When asked about its stock and whether it is traded, he once again agrees that it is a partnership therefore not a traded stock entity. App. 6a. (Lincoln's counsel at the deposition never

objects to that characterization, or asks Chaney any clarifying questions.)[1]

The problem with *Amici's* misleading argument is the same as Petitioners' analysis of the *Roche* decision — it ignores the obvious finding of the circuit court which is that Lincoln proved itself to be a partnership, not a corporation. (*See* Appendix and *Roche*, at 616-619.) *Amici* and Lincoln have spun the dicta discussion on the concept of the "real party in interest" into an assertion that the decision established a new jurisdictional rule.

The Plaintiffs sued Lincoln Property Company because that is who advertised themselves as the property managers and who appeared in the lease. Prior to filing suit Plaintiffs ascertained that Lincoln ostensibly was incorporated in Texas and accordingly that it was a Texas citizen, and so alleged this in its original state-filed action (in Virginia it is called a "Motion for Judgment"). But, discovery in the case demonstrated that Lincoln was not only a citizen of Texas, but because it advertised and declared itself as a partnership, it was also a citizen of many other states, including Virginia, where one of its partners resided.

1. Another Lincoln official describes one of Lincoln's partners, Jeff Franzen, as the highest ranking officer at the Herndon, Virginia, office. App. C, 10a-12a. The company's web-site identifies the partners in Lincoln, including "Jeff B. Franzen" as an officer and operating partner for Lincoln Property Company. App. D, 14a. Answers to Interrogatories are signed by Jeff B. Franzen as a Senior Vice President/Partner, and in the affirmation, he identifies himself as the Senior Vice President and Partner for Defendant Lincoln Property Company, and authorized to act for Lincoln. App. E, 15a-16a. In complying with Federal Rules of Civil Procedure 26(a)(1)(A), the "initial disclosures" Jeff Franzen is identified as a Senior Vice President and Partner for Lincoln Property Company. App. F, 17a-18a.

Because Lincoln never placed in the record sufficient facts to show whether or not some of its corporate partners, such as EQR/Lincoln Limited Partnership partners resided in Virginia; or whether or not some of its corporate partners had their principal place of business in Virginia, Lincoln left a lot of doubt concerning the citizenship of its partners, both limited, general, and corporate partners. [A *corporate* partner is a citizen of its place of incorporation as well as its principal place of business. *Tauber Partners, I v. Merit Builders, Inc.*, 987 F.2d 57 (1st Cir. 1993), a case cited and substantially relied upon by Lincoln and Amici in their arguments.]

The Fourth Circuit's decision was a fundamental determination that Lincoln, as the removing party, did not carry the burden of proving its diversity of citizenship. The only reason to grant *certiorari* would be to affirm the *Roche* decision and further caution of the necessity to clearly establish in the record that diversity of jurisdiction exists, particularly when it is challenged by a remanding motion. However, this lesson has been well-defined by this Court numerous times.[2] The law is clear that the burden is on the removing party to

2. The burden of establishing federal jurisdiction is placed upon the party seeking removal. *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92 (1921). Because removal jurisdiction raises significant federalism concerns, this Court must strictly construe removal jurisdiction. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941).

> The dominant note in the successive enactments of Congress relating to diversity jurisdiction, is one of jealous restriction, of avoiding offense to state sensitiveness, and of relieving the federal courts of the overwhelming burden of 'business that intrinsically belongs to the state courts,' in order to keep them free for their distinctive federal business. [citations omitted].

Northbrook National Ins. Co. v. Brewer, 493 U.S. 6, 18-19 (1989).

demonstrate diversity, and the rules of construction will weigh all doubt against the removing party because of federalism concerns.

Congress recognized this same principal when it decided that an imprudent removal cannot be made with impunity (an order remanding the case may require payment of just costs and any actual expenses, including attorney's fees, incurred as a result of the removal.) 28 U.S.C. § 1447(c).

The *Roche* court looked at the same uncontroverted evidence in the motion to remand that the district court had before it. *Roche* at 616. The circuit court then concluded that Lincoln had not carried its burden in showing that it was not an unincorporated association; and, therefore, it should be treated as a partnership for diversity purposes.[3] This Court's review is not needed because there is no conflict over the rule established by *Cardon* and reaffirmed in *Grupo Dataflux v. Atlas Global Group, LP*, 541 U.S. 567 (2004), that the citizenship of a limited partnership is governed by the citizenship of its partners.

---

3. The *Roche* court did not fault Lincoln for operating under numerous different entity structures, but explained that if one does operate in that fashion, it must carry its burden of proving the citizenship in accordance with the applicable rule of law, in this case, *Cardon v. Arkoma Assocs.* While the *Amici* claimed there is "nothing unusual or improper about Lincoln's business structure," there is something questionable when Lincoln so convolutes itself within multiple structures such that tenants as the Roches cannot figure out who and what "Lincoln Property Company" is. For instance, when it signed the Lease on behalf of SWIB, the owner and landlord, Lincoln did so through the entity known as "Lincoln Property Company ECW, Inc., Agent," [App. H, 21a-24a] an entity and name that is different from all others involved in this case and which was never explained in any of the submissions or declarations placed in the record by Petitioners.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should not be granted, and the judgment below affirmed.

Respectfully submitted,

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Suite 100
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Counsel for Respondents

APPENDIX

APPENDIX A — EXCERPTS FROM MEMORANDUM IN SUPPORT OF MOTION TO REMAND FOR LACK OF SUBJECT MATTER JURISDICTION DATED APRIL 22, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 02-1390-A (GBL)

CHRISTOPHE ROCHE, et al.,

Plaintiff

v.

LINCOLN PROPERTY CO., et al.,

Defendant

MEMORANDUM IN SUPPORT OF MOTION TO REMAND FOR LACK OF SUBJECT MATTER JURISDICTION

I. SUMMARY OF RELIEF REQUESTED:

If at any time prior to final judgment it becomes clear that the removal court lacks subject matter jurisdiction, the removal court must remand the case to the state court from which the defendants originally removed the case. 28 USC § 1447(c). If the Federal Court lacks subject matter jurisdiction, remand is mandatory and not reviewable on appeal. The Court strictly construes removal status because

of federalism concerns. Where the need to remand is not self-evident, the Court must resolve any ambiguities concerning the propriety of removal in favor of remand.

For the reasons stated below, it is clear that there is a lack of subject matter jurisdiction because the numerous entities of Lincoln Property Co., including the one that is managing Westfield Village and accepting the management payments are not Texas Corporations. In actuality, it is a partnership conducting business in the Commonwealth of Virginia.

* * * *

APPENDIX B — EXCERPTS FROM DEPOSITION OF FRED E. CHANEY DATED FEBRUARY 13, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 02-1390-A (JBL)

February 13, 2003

CHRISTOPHE ROCHE, ET AL.

Plaintiff

vs

LINCOLN PROPERTY CO., ET AL.

Defendant

DEPOSITION OF:

FRED E. CHANEY

was called for examination by Counsel for the Plaintiff, pursuant to Notice, taken at the law offices of Jerry M. Phillips, Esquire, Phillips, Beckwith, Hall & Chase, 10513 Judicial Drive, Suite 100, Fairfax, Virginia 22030, commencing at 1:10 p.m., on the 13th day of February, 2003, before Mary Silverthorne, a Notary Public in and for the State of Virginia, at Large, when were present on behalf of the respective parties:

* * *

Appendix B

[4] Thereupon,

FRED E. CHANEY

the witness, called for examination by Counsel for the Plaintiff, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. PHILLIPS:

Q Would you please state your name and address?

A Fred Chaney, 4028 Centenary -- that's C-e-n-t-e-n-a-r-y -- Dallas, Texas.

Q And would you please tell us what your occupation is and your position?

A I am property manager for Lincoln Property Company and Senior Vice President.

Q And do you sit on the board of Lincoln Property?

A We're a partnership. I am a partner in new deals. We don't have a board.

Q And this is a limited liability corporation or company?

A We have multiple structures that we

* * *

Appendix B

[18] * * *

A The partnership that I work for does not. Other partnerships in Lincoln, the commercial side of our company manages assets for Invesco.

Q Now, Lincoln, as you say, is a partnership?

A Yes.

Q And with its headquarters in Dallas, how many employees work for Lincoln Properties Partnership?

A Can you dissect the difference between commercial and residential? If you can, I can answer that. If you can't, I can't, because I don't know.

Q What is your knowledge -- what would your knowledge be in, residential?

A Purely residential.

Q What would that be?

A And I am --

MS. BERTRAM: Objection, vague. Go ahead.

THE WITNESS: Approximately 2000 employees.

* * *

[21] information?

A I'm a 30 year guy with Lincoln. And, as far as I know, we have never produced any.

Q There has never --

MS. BERTRAM: Let him finish the response.

BY MR. PHILLIPS:

Q I am sorry. Go ahead.

A We have never produced a roll up of the value of all the partners' interests in the company.

Q Now, this is not traded -- is it -- on any stock exchange?

A No.

Q And it is not a publicly offered entity since it is a partnership- Am I correct?

A Correct.

MS. BERTRAM: I need to make certain. Let him finish his question, and then you respond. It is not a regular conversation, and I want the record to be clear.

THE WITNESS: Okay.

* * *

[28] * * *

Q Besides managing some of these properties, do you also own some of them -- complexes?

A We're in partnerships. Various Lincoln partnerships are in ownership -- various Lincoln partners are partners in partnerships that own assets.

Q Okay. What percentage of the apartments that Lincoln Properties manages are also subject to partnership ownership?

A Approximately 25%.

Q Westfield Village is one of the Virginia properties?

A Yes.

Q Is that -- and you know that is owned by SWIB?

A That is correct.

Q Is there any partnership arrangement with that?

A No.

* * *

[66] They are lofty goals.

MR. PHILLIPS: Okay. And I am going to show you what I will be asking to be marked as Number Nine.

(Thereupon, Exhibit Number Nine was marked for identification.)

BY MR. PHILLIPS:

Q It is entitled Company Mission Statement. Would you look at that? Does that appear to be accurate?

A Uh-huh. (affirmative) That is correct.

Q Was that in effect -- it has been in effect for how long?

A I think this mission statement has been in effect for a couple years.

MR. PHILLIPS: Okay. I show you one other. Off the record.

(Thereupon, Exhibit Number Ten was marked for identification.)

MR. PHILLIPS: I will represent I took these off of the website also today.

(Thereupon, remarks were made off the record.)

[67] BY MR. PHILLIPS:

Q Number Ten has a list of clients in alphabetical order. Even though -- I'm telling you that I -- or I represent to you that I took this off today, February 13th. But this is not a complete list -- is it -- of all the clients?

A I can't tell you. I don't know. I mean it, in general, lists most of our clients.

Q Would Invesco be one of them that should have been listed here?

A I don't know why not. Invesco is.

Q It is?

A Uh-huh. (affirmative)

Q Which one is? Oh, yeah Invesco, Realty. It is listed. I apologize. And do you know how many more should be listed that aren't on here?

A Again, generally, that is a representation of the bulk of our clients. 70% or 75% of the buildings that we manage are owned by third parties, some of which are individual owners.

Q Okay. Now, I am going to ask you some questions about your knowledge of mold issues.

A Okay.

* * * *

APPENDIX C — EXCERPTS FROM DEPOSITION OF JOHN LeBEAU DATED MARCH 3, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 02-1390-A (JBL)

Monday, March 3, 2003

Vienna, Virginia

CHRISTOPHE ROCHE, *et al.*,

Plaintiffs,

v.

LINCOLN PROPERTY CO., *et al.*,

Defendants.

Deposition of:

JOHN LeBEAU

a witness, called for examination by counsel on behalf of the Plaintiffs, pursuant to notice, taken in the law offices of Venable, Baetjer, Howard & Civiletti, 8002 Towers Crescent Drive, Vienna, Virginia, beginning at approximately 2:20 o'clock p.m., before William L. Finley, Verbatim Reporter and Notary Public in and for the Commonwealth of Virginia, when there were present on behalf of the respective parties:

* * *

[20] A Vice President.

Q Is there anyone higher ranking than you at this regional office, as far as supervisory or management authority?

MS. BERTRAM: Objection; vague.

BY MR. PHILLIPS:

Q In other words, who is the highest ranking officer at that office?

MS. BERTRAM: Same objection.

BY MR. PHILLIPS:

Q Today, I mean. Right now.

A Jeff Franzen.

Q Jeff --

A Franzen.

Q And does he work out of the Herndon office?

A Yes.

Q And how long has he been there?

A I don't know.

Appendix C

Q Has he been there since you started in 1999?

A Yes.

Q And that's F-r-a-n-z-e-n?

[21] A Yes.

Q And what's his title?

A Senior Vice President, Partner.

Q He is a partner in Lincoln Property Company; correct?

MS. BERTRAM: Objection to the extent it calls for speculation.

BY MR. PHILLIPS:

Q Is that correct?

A I don't know what he is a partner of.

Q Well, you report to him?

A Somewhat.

Q Who is your direct report?

A Fred Cheney.

* * * *

APPENDIX D — PART OF LINCOLN PROPERTY COMPANY'S INTERNET WEBSITE DATED FEBRUARY 13, 2003

Reggae D. Delponte, Senior Vice President - California

Reg DelPonte is Senior Vice President and Operating Partner for Lincoln Property Company - California. Mr. DelPonte opened the Western Region office in September 1998. His responsibilities include all residential development in California as well as acquisition of existing properties or portfolios. Since opening the office, he has developed over 2,000 multifamily units and acquired a portfolio of 3,500 existing units.

Prior to joining Lincoln, Mr. DelPonte was President of Calco Investments and in 1983 formed DelPonte Companies, which developed mixed use commercial and industrial business parks with a total of 2.5 million square feet of development. Mr. DelPonte began his real estate career as a commercial real estate broker with Grubb & Ellis Commercial Brokerage Company in 1979 where he received numerous awards, including Overall Top Producer for two consecutive years.

Mr. DelPonte is a native of Denver and a member of the Urban Land Institute.

Appendix D

Jeff B. Franzen, Senior Vice President - Mid Atlantic

Jeff Franzen is Senior Vice President and Operating Partner for Lincoln Property Company Northeast/MidAtlantic. Mr. Franzen opened the Washington DC office for Lincoln in 1985 and directs all of Lincoln's residential operations from New England to North Carolina. His region currently manages over 12,500 apartment units.

Mr. Franzen currently serves on the Boards of the National Multi-Housing Council the Women's Center of Northern Virginia and is active in the Urban Land Institute serving as Vice Chairman of the Program Council. A native of Dallas. Mr. Franzen received a BBA from Southern Methodist University in 1976 and an MBA from the University of Dallas in 1979. Mr. Franzen is licensed as a real estate broker in most of the eastern United States and is an active CCIM candidate.

Kevin Keane, Senior Vice President - Eastern Midwest

As Senior Vice President and Operating Partner for the Lincoln Property Company Midwest. Mr. Keane is responsible for overseeing development, financing and monitoring ongoing property management activities throughout Pennsylvania. Ohio, Michigan, West Virginia mid Kentucky. Mr. Keane also tracks market conditions, which affect cities throughout the Midwest markets. He then determines which markets and sub-markets in which to concentrate real estate development and value added real estate investments. Mr. Keane is also involved in the financing, sale, development, construction and management of . . .

* * * *

APPENDIX E — SIGNATURE PAGE OF LINCOLN'S ANSWERS TO INTERROGATORIES DATED DECEMBER 2, 2002

In addition to its General Objections, Defendant objects to this Interrogatory on the grounds that it purports to impose requirements different from or in addition to the Federal Rules of Civil Procedure and the Rules of the United States District Court for the Eastern District of Virginia. Subject to and without waiving its General and Specific Objections, Defendant will produce the expert disclosures required by the Federal Rules and the Local Rules pursuant to and within the time frames established by those rules.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 15:

Subject to and without waiving its General and Specific Objections, see Defendants' expert disclosures pursuant to Rule 26(a)(2).

AFFIRMATION

I, Jeff B. Franzen, hereby certify and affirm, under the pains and penalties of perjury, that I am the Senior Vice President/Partner for Defendant Lincoln Property Co. ("Lincoln"), that I am authorized to act for Lincoln, that the facts set forth in these Supplemental Answers to Plaintiff Christophe Roche's First Set of Interrogatories have been assembled at my direction, with the assistance of authorized employees and counsel for Lincoln, and that the assertions therein are true and correct to the best of my knowledge, information and belief. Lincoln reserves the right to supplement its responses to the extent that subsequent

discovery should reveal any additional facts not currently known to Lincoln. Executed this 19th day of February 2003.

s/ Jeff B. Franzen
Jeff B. Franzen
Senior Vice President/Partner

APPENDIX F — EXCERPTS FROM LINCOLN'S FRCP 26(a)(1)(A) INITIAL DISCLOSURES DATED DECEMBER 2, 2002

Lincoln expressly reserves all objections to the use and admissibility of any of the categories of documents identified in these Initial Disclosures. Moreover, Lincoln reserves any objections it may have to the production of these categories of documents under the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or any privileges or protections that may be available under federal or state statutory or common law.

I. 26(a)(1)(A):

In compliance with Rule 26(a)(1)(A), Lincoln lists below the names, addresses, and telephone numbers of individuals who are likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings:

Name	Address	Topics
John LeBeau Vice President Lincoln Property Co.	Contact through counsel for Lincoln only.	Leases between the Roches and SWIB Roches' service requests Lincoln's response to service requests alleged mold in the Roches' apartment Lincoln's mold policies for Westfield Village remediation of the Roches' apartment handling and storage of the Roches' personal property

Appendix F

Name	Address	Topics
Jeff B. Franzen Senior Vice President/ Partner	Contact through counsel for Lincoln only.	Alleged mold in the Roches' apartment Lincoln's mold policies for Westfield Village remediation of the Roches' apartment handling and storage of the Roches' personal property.
Lana Zylka (Former) Regional Manager Lincoln Property Co.	Contact through counsel for Lincoln only.	Lease between the Roches and SWB Roches' service requests Lincoln's response to service requests alleged mold in the Roches' apartment Lincoln's mold policies for Westfield Village remediation of the Roches' apartment

APPENDIX G— LINCOLN'S STIPULATION LETTER REGARDING FINANCIAL STATISTICS FOR SATISFACTION OF PUNITIVE DAMAGES DATED MARCH 18, 2003

VENABLE

Attorneys at Law

March 18, 2003

VIA FACSIMILE AND REGULAR MAIL

Jerry M. Phillips

Phillips, Hall, Beckwith & Chase

10513 Judicial Drive, Suite 100

Fairfax, VA 22030

Re: *Christophe Roche, et al. v. Lincoln Property Co., et al.*, United States District Court for the Eastern District of Virginia, Civil Action No. 02-1390-A (JBL)

Dear Jerry:

I am writing in response to your March 13, 2003 letter requesting information concerning Lincoln's financial statements. Lincoln is willing to enter into a stipulation regarding the following financial information concerning EQR/Lincoln Limited Partnership, the entity that receives the management fees for Westfield Village Apartments:

	2001 (audited)	2002 (unaudited)
Net worth/book value	$7,759,939	$8,655,790
Revenue from Management Fees	$19,884,710	$17,353,301
Other Revenue	$17 258,929	$ 7,535.277
Total Revenue	$37,143,639	$24,888,578

Appendix G

I believe that this proposed stipulation addresses each of the categories of information requested in your March 13, 2003 letter. If this proposal is acceptable, I will amend the parties' proposed pre-trial stipulations to include this information.

Thank you for your assistance with this matter.

Sincerely,

s/ Connie N. Bertram /nsc
Connie N. Bertram

APPENDIX H — LAST HALF OF SIGNATURE PAGE OF ROCHES AND LANDLORD LEASE DATED MARCH 30, 2001

made by Owner or its representatives to one of the Residents of the Apartment shall be binding on all Residents of the Apartment with the same force and effect as if made to each of them. All obligations hereunder are to be performed in the county where the community is located. If Owner is unable to give resident possession of the Apartment at the agreed date for any reason, including construction, holdover, etc., Owner shall not be in default hereunder nor be liable to resident as a result of such delay, and the Lease shall remain in force subject to the following: (1) Rent shall be abated on a daily basis during such delay, and (2) Resident may terminate by giving written notice to Owner upon at least five (5) days written notice to Owner, whereupon Resident shall be entitled only to a refund of the Security Deposit and prepaid rent. Resident's right of abatement or termination shall not apply to cleaning or repair delays which do not prevent occupancy by Resident. All of Resident's statements in the rental application were relied upon by Owner in execution of the Lease. Resident may not withhold Rent or offset against Rent. In the event the Lease is executed prior to approval of Resident's rental application by Owner, the Lease shall not become effective until Owner has either tendered the Apartment to Resident or approved resident's application(s) in writing. Any clause of the Lease declared invalid by law shall not invalidate the remaining clauses in the Lease. It is specifically understood and agreed between the parties hereto that any obligation of Owner to pay money or other consideration to Resident shall be satisfied solely from the Owner's estate and interest in the property of which the Apartment is a part, or the proceeds thereof, and Resident covenants and agrees that only such financial interest will be pursued for the satisfaction of any remedy which Resident

may have for the collection of money or other consideration from Owner by judicial press or otherwise.

11. LINCOLN PROPERTY COMPANY'S STATUS. Important: Read this Section carefully. It is specifically understood and agreed that LPC acts only as Agent for Owner. Responsibility for all obligations of Owner, including Security Deposits, rests entirely on such Owner. Resident agrees that LPC may exercise and shall have all of the rights, powers and benefits of Owner hereunder.

12. THIS CONTRACT may be executed in multiple copies. Omission of initials on any page of this Lease does not invalidate the Lease. A copy of Owner's Community policies will be furnished when Resident moves in, or earlier if requested.

13. SPECIAL PROVISIONS OR ADDITIONAL AGREEMENTS: In the event of an emergency, death, or illness involving Resident. Resident hereby authorizes Owner or its representatives to give Resident's key and release of all resident's possessions to the representative designated on page one of this Lease subject to Owner being directed otherwise by a Probate or other court of law. During the Lease Term or during any renewal or extension thereof, upon thirty (30) days' written notice to Resident.

14. Owner may increase the Rent. If Owner reasonably determines that the expenses fairly allocable to the Apartment for capital improvements to the Community,

property taxes, utilities, charges for municipal services, insurance, or operating and maintenance expenses have increased by at least the amount of the rental increase, but in no event shall such increase exceed fifteen percent (15%) during the Lease Term. Owner reserves the right to increase Rent for reasons other than specified herein above upon forty-five (45) days' written notice to Resident, in which event Resident shall have an opinion to terminate the Lease by giving Owner written notice of termination within seven (7) days after receipt by the Resident of the aforesaid notice of Rent increase. In the event of termination by Resident, such termination shall be effective on the date of the scheduled Rent increase. Other provisions, if any, shall be set forth on page one of this Lease.

15. HAZARDOUS SUBSTANCE. Residents shall use no hazardous substance or hazardous materials in or around the apartment except for normal household cleaning products which will be used and stored in a manner consistent with such household use, and Residents shall dispose of such cleaning products in accordance with all applicable laws.

36. THIS IS A BINDING LEGAL DOCUMENT. READ ENTIRE CONTRACT. WHICH CONSISTS OF PARAGRAPHS 1-34. EXHIBITS "A" and "B", AND ANY ADDENDA ATTACKED HERETO. CAREFULLY BEFORE SIGNING BELOW AND INITIALING ALL PAGES ATTACHED HERETO.

Appendix H

Resident(s)	Date	OWNER: s/ SWIB
s/ [illegible]	03-30-01	
s/ [illegible]	03-30-01	

By: LINCOLN PROPERTY COMPANY ECW, INC. AGENT
3500 Lincoln Plaza
500 North Akard
Dallas, Texas 75201-3394

By: s/ Matthew Lewis
(Lincoln Property Company Agent)